

Doferson County Circuit Court  
Case Files - Civil  
January 1878

Box 37 Folder 59

Barnick, Herman

vs

Meng, Friedrich

Damages

Defendant built dam across  
stream causing plaintiffs  
land to flood; \$500 damages

State of Missouri

County of Jefferson

Herman Buncke

Plff

vs

Fredrick Meng

Def -

}  
}

In the Circuit

Court Jan'y 7. 1878.

Plaintiff states that he is the owner of and has the possession of the following described tract of land in Jefferson County Missouri to wit, Forty acres, lying and being situate in the South west corner of United States Survey 1311, that he has on said land large and valuable improvements consisting of dwelling house and other suitable buildings attached thereto, stables and large barn, also a large farm covering nearly all of said forty acres, surrounded by a good and substantial fence also horse lot and calf and cow pasture; that the defendant is the owner of and occupies a tract of land lying on the north west, and south west, and west of said land of the Plaintiff which land of the defendant is also enclosed by a fence.

Plaintiff further states, that there is a rivulet or branch which rises on the west of the lands of the defendant above

referred to, and runs through said lands in an eastern direction into and through the lands of the Plaintiff. That said stream for a good part of the year affords water for Plaintiff stock, and for other purposes, and for the remainder of the year is dry. That at times, after heavy rains said stream becomes swollen, and if obstructed in its natural and regular course through Plaintiff land overflows the same and washes away his fencing and damages his crops, and cultivated fields.

Plaintiff avers that said defendant heretofore to wit on the day of 1877. erected a private road way across said stream on the line separating his lands from the lands of the Plaintiff, and in said road way erected a large dam made of logs, rocks, brush and with a crib the head of said stream, and obstructed dammed up and prevented, all the water flowing through said stream from passing through its natural channel into the lands of the Plaintiff, that by reason of the obstructions aforesaid said water dammed up as aforesaid

\* and from its nature is not susceptible of an  
adequate compensation by damages at law and such  
as grow out of nature must occasion a constantly recurring  
inconvenience which cannot otherwise be prevented but by  
injunctive

accumulations in large quantities above  
said dam, and when very high overflow  
the land of the plaintiff at other places  
other than the natural channel of  
said stream, and when said water  
does not become very high, so as to  
overflow as aforesaid it is retained  
above said dam, and plaintiff  
is deprived of the use thereof.

Plaintiff avers that by reason of the  
erection of the dam aforesaid across  
the stream aforesaid, and in the manner  
aforesaid his land are at times and greatly  
damaged as aforesaid, his fencing washed  
away, and his soil taken off, and at  
other times he is deprived of the use  
of the waters of said stream, which he  
would have if said obstruction did  
not exist. For all of which he has been  
damaged in the sum of five hundred  
dollars for which he asks judgment.

Plaintiff avers that said dam so  
erected as aforesaid is a <sup>continuing</sup> private nuisance, and prays the court in consider-  
ation of the premises to state the same  
and by an order of this court to compel  
said defendant to remove said dam and  
every part thereof & for other proper relief

P. P. P. Kin  
Petty City,

Off. Gen. Court  
Lang T. 1878

Norman Benck

by

Fredrick Meng

Att'n to atch nuisance  
for damages

The clerk will

have.

P. D. Dixon  
for P. D.

Filed Dec. 8<sup>th</sup> 1877,  
C. H. H. H. H.  
clerk.

**The State of Missouri,** } ss.  
COUNTY OF JEFFERSON.

*The State of Missouri,*

TO THE SHERIFF OF <sup>the</sup> COUNTY OF JEFFERSON---GREETING:

*I* command <sup>you</sup> that you summon *Frederick Moeng*

if he be found in your County, that he be and appear before the Honorable Judge of our Circuit Court, on the first day of the next term thereof, to be begun and held at the town of Hillsboro, within and for the County of Jefferson, on the *second* Monday of *January* next, then and there to answer unto *Herman Benecke*

upon *his* original petition, a copy whereof is hereunto annexed and accompanies this writ, and have you then and there this writ.

**Witness,** C. THO' HORINE, Clerk of our said Circuit Court, with the seal thereof hereunto affixed, at office in Hillsboro, this *7th* day of *December* A. D., 187*7*.

*C. Tho' Horine*, CLERK CIRCUIT COURT.

45-131

RETURNABLE  
TO  
JEFFERSON CIRCUIT COURT.

January TERM, 1878.

Norman Benedict

vs

Frederick Meng

original

John W. Williams  
Sherriff Fee \$1.00

188-338

I Executed this Writ in Jefferson County Mo on the  
27<sup>th</sup> Day of December 1877 by Delivering to  
Frederick Meng a true copy of this Writ and Petition  
as furnished by the Clerk

John Williams Sherriff  
by John Cook Deputy

529

Norman Bencke Plaintiff

v.

Fredrick Meng, Defendant

In the Jefferson Circuit  
Court

Now at this day comes said  
Defendant & for answer to the  
petition of the Plaintiff states  
that he denies each and  
every allegation therein  
contained

John H. Minor & Bro  
Atty. for Defendant

Herman Benedek

<sup>27</sup>

Fredrick Meng

Ammer.

Filed Mar, 11 1878

Chas. H. Hines

Clears

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To *John Goldhoar Joseph Berger and*  
*Dorothea Buchling*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *14th* day of *January*, 187*9*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein *German Dorothea* is Plaintiff, and *Dorothea Meng* is Defendant, on the part of *Plaintiff*; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said

Circuit Court, with the seal thereof hereunto affixed, at office in Hillsboro, this *3rd* day of

*January*, A. D., 187*9*.

*C. Tho' Horine*, Clerk Circuit Court.

Executed the within writ at the County of Jefferson  
State of Missouri on the 7<sup>th</sup> day of January 1877  
by reading the within writ to John Goldbear  
Joseph Yeager and Theodore Burching in their  
presence and hearing

Thos. J. Jones Sheriff

By John R. Cook Deputy

James R.

vs

Henry

J

John Goldbear

Joseph Yeager

Theodore Burching

Sheriff's Fee \$ 1.50

Book of Jones

JAN  
18  
1877

STATE OF MISSOURI,  
COUNTY OF JEFFERSON.

To

*Dr. J. L. Langbehn, Plaintiff, vs. Dr. J. L. Langbehn, Defendant.*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *14th*, day of *January*, 187*9*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein *Dr. J. L. Langbehn* is Plaintiff, and *Dr. J. L. Langbehn* is Defendant, on the part of *Dr. J. L. Langbehn*; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said

Circuit Court, with the seal thereof hereunto affixed, at office in Hillsboro, this *3rd* day of

*January*, A. D. 187*9*.

*C. Thos. Horine*, Clerk Circuit Court.

Executed the within writ at the county of Jefferson  
state of Missouri on the 7<sup>th</sup> day of January 1878  
by reading the same in the presence and hearing of  
Henry Hemme Theodore, Buchting Fritz, Longchening  
Harrison Wilson Geo. Reiss and Fritz Melge

T. J. Jones Sheriff

By John R. Cook Deputy

Done

Me

to

Henry Hemme

Theodore Buchting

Fritz Longchening

Harrison Wilson

Geo. Reiss

Fritz Melge

Sherriff fee \$ 3.00

Done

Herman Bencke Plaintiff }  
Fred. <sup>n</sup> Meng Defendant }

Now at this day comes  
said Defendant and for answer  
to the petition of Plaintiff states  
that he denies each and every  
allegation therein contained  
John L. Howard <sup>Att.</sup>  
Atty. pro. def.

H. Bencke

m

F. Meng

Answer

FILED

JAN  
14  
1879

L. Mc. Kenzie  
CLERK.

~~Lydia~~

H. Beneke  
as  
Fred Meng }

Witnesses for Defendant  
Henry Kemme, Theo. Busting, Fritz  
Joseph Henning, Hanson Wilson  
George Reiss, Fritz Melge,



H. Beneske  
to

Fred. Meng

Recipe for  
"Soft" butter

Given

If the Court find from the evidence in this case that Defendant in making a private roadway over his own land built a dam across a hollow in his land ~~by which~~ ~~which the surface was dammed~~ ~~up on his own land~~ where there was no running stream of water with defined banks then the verdict should be for Defendant although the Court may further find from the evidence that the surface water in said hollow during rains was dammed or diverted from its natural channel & thrown onto the land of Plaintiff provided Defendant used ~~reasonable~~ reasonable care in erecting & maintaining said dam.

Bunce  
vs  
Meng

The Court instructs the jury that the plaintiff is entitled to the use of the flow of the water in its natural course by the stream mentioned in the petition read to the jury, as it passes from the land of an adjoining proprietor into and through the lands of the plaintiff.

You are therefore instructed that if you believe from the evidence that the defendant prior to the bringing of this suit erected a dam across said stream in such a manner as to stop the flow of said water so as to deprive the plaintiff of its reasonable use, or constructed such dam so as to divert said stream from its natural course & thereby cause the same to overflow the lands of the plaintiff the jury will find for the plaintiff and assess his damages at such sum as the jury may find he has sustained, not exceeding the amount claimed in the petition.

Requar

Diff Instructions

Pineke

Long

30  
Refused

Although the jury may find from the evidence that the action of the respondent in erecting said dam (if open) will be a nuisance, still you will find nominal damages, for the palming off of the gun valve from the evidence that such claim was made as a result of said damage, and the parties Richard or his son in fraud flowing on to through both said.

Known all men, by these presents, that  
I have this day constituted and appointed  
and by these presents do constitute and  
appoint Arthur Gager as my Confee  
agent to collect and receive therefor  
in my name all the fees and moneys  
in a case wherein Hermann Bencke  
was Plaintiff and Fred Meng  
Defendant in the Circuit Court of  
Jefferson County Mo.  
Given under my hand this 12<sup>th</sup>  
day of November 1879.  
George Rising

4513

Bencke

to

Meng

Geo Reising  
Order for  
fees. Paid  
to A. Meyer  
Nov 3<sup>d</sup> 1879

C. H. Horne Circuit Clerk

Jefferson Co Mo

Please pay Jas. J. Moss the fee due  
me in case of Beneche against Area  
Ming.

Harrison <sup>his</sup> Wilson  
mark

*Beuicke vs Meng-*

**BILL OF COSTS.**

|                                                                                                        | DOLLARS | CENTS | DOLLARS | CENTS |
|--------------------------------------------------------------------------------------------------------|---------|-------|---------|-------|
| <i>C.</i> Tho' Horine, Clerk,                                                                          |         |       |         |       |
| 8 Files, <sup>40</sup> Copies, <sup>60</sup> Cert. and Seals <sup>50</sup>                             | 1       | 50    |         |       |
| <sup>1</sup> / <sub>1</sub> Sum. and Copies <sup>110</sup> Order <sup>55</sup> Conf. <sup>Apr 19</sup> | 1       | 75    |         |       |
| 2 cont,                                                                                                |         | 50    |         |       |
| Affd's Default Judg't. <sup>50</sup>                                                                   |         | 50    |         |       |
| Fee Bill <sup>10</sup> Making Costs <sup>50</sup>                                                      |         | 60    |         |       |
| Ent. Sat. <sup>25</sup> 2 Spas <sup>50</sup> Execution                                                 | 75      | 5     | 60      |       |

|                                                        |    |    |    |
|--------------------------------------------------------|----|----|----|
| <i>John Williams</i> Sheriff Sum,                      |    | 1  | 00 |
| <i>Thos Jones</i> Sheriff 9 Spas                       | 4  | 50 |    |
| 11 Calls @ 5 <sup>c</sup> ,                            | 55 |    |    |
| <u>Witnesses</u>                                       |    | 5  | 05 |
| <i>Wm Finter</i> 1 day & ent. 2 mt @ 35 <sup>c</sup>   | 1  | 70 |    |
| <i>Theo Buckling</i> 2 days 13 miles @ 16 <sup>c</sup> | 4  | 08 |    |
| <i>Geo Kissing</i> 2 " 13 " " "                        | 4  | 08 |    |
| <i>Henry Kemme</i> 2 " 13 " " "                        | 4  | 08 |    |
| <i>Harrison Wilson</i> 2 " 12 " " "                    | 3  | 92 |    |
| <i>Fred, Wilker</i> 2 " 13 " " "                       | 4  | 08 |    |
|                                                        | 21 | 94 |    |
|                                                        | 33 | 59 |    |
|                                                        | 1  | 20 |    |
|                                                        | 31 | 89 |    |